

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 31

Citations Affected: IC 8-23.

Synopsis: State highway property acquisition. Proposed conference committee report to ESB 31. Establishes notice and hearing procedures applying to the establishment by the Indiana department of transportation (department) of rights-of-way for additions to the state highway system. Requires the department to comply with certain notification procedures relating to compensation to owners for damage done to real property by the department during the survey and investigation process. **(This conference committee report deletes and reinserts the contents of ESB 31 as reprinted February 19, 2008, with the following changes: (1) Removes notification procedures relating to compensation to owners for damage done to real property by the department during the land acquisition process. (2) Requires the department to pay compensation awarded to an aggrieved party within 60, rather than 30, days.)**

Effective: July 1, 2008.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 31 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 8-23-5-9 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2008]: Sec. 9. (a) The department may establish the approximate
- 5 locations, using the recommended widths established by the
- 6 department in the department's approved design manual for
- 7 equivalent classification of roads, of rights-of-way for additions to
- 8 the state highway system.
- 9 (b) If the department establishes the approximate locations and
- 10 widths of rights-of-way for an addition to the state highway system
- 11 under subsection (a), the department shall conduct a public
- 12 hearing in at least one (1) county in which a right-of-way for the
- 13 addition is located. The department shall publish notice of a
- 14 hearing conducted under this subsection in two (2) newspapers of
- 15 general circulation in the county in which the hearing will be
- 16 conducted at least ten (10) days before the hearing. If only one (1)
- 17 newspaper is published in the county, publication in that
- 18 newspaper is sufficient. Notice of the hearing shall be given by mail
- 19 to all owners of real property identified within the rights-of-way
- 20 shown on the map prepared under subsection (c).
- 21 (c) If the department establishes the approximate locations and
- 22 widths of rights-of-way for an addition to the state highway system

under subsection (a), the department shall prepare a map showing the approximate location and width of each right-of-way for the proposed addition. The map must display the following:

- (1) Existing highways in the area of the addition.
- (2) Property lines and owners of record of property to be acquired for the rights-of-way.
- (3) Other information determined necessary by the department.

The department shall approve the map, with changes (if applicable), at the public hearing conducted under subsection (b). The department shall record the approval and a copy of the approved map in the office of the recorder of each county in which land to be acquired for the addition is located.

(d) The department shall:

- (1) publish notice of a recording under subsection (c) in two
- (2) newspapers of general circulation in each county in which an approval is recorded; however, if only one (1) newspaper is published in the county, publication in that newspaper is sufficient; and
- (2) not more than sixty (60) days after an approval is recorded, send notice of the recording by certified mail to all owners of record of real property to be acquired for rights-of-way for the addition.

(e) The owner of property to be acquired for a right-of-way must give at least sixty (60) days notice by registered mail to the department before developing or otherwise improving the property. However, the owner may perform normal or emergency repairs to existing structures on the property without giving notice to the department.

(f) Not more than forty-five (45) days after receiving a notice under subsection (e), the department shall respond by providing notice to the property owner of the department's intent to acquire the property. The department shall:

- (1) purchase; or
- (2) exercise the right of eminent domain to acquire;

the property not more than one hundred eighty (180) days after responding under this subsection. If the department does not purchase the property or acquire the property by eminent domain within one hundred eighty (180) days after responding under this subsection, the department may subsequently acquire the property through the exercise of the right of eminent domain under IC 32-24.

(g) An owner of property to be acquired for a right-of-way may not receive damages for any development or improvement for which the owner is required to give notice to the department under subsection (e) unless the department fails to purchase or exercise the right of eminent domain to acquire the property under subsection (f).

(h) The state or a county or municipality in which an addition to the state highway system is located may acquire a right-of-way needed for the addition at any time. For purposes of this

subsection, the fair market value of the property shall be determined as follows:

(1) If the property is purchased, the fair market value on the date of purchase.

(2) If the property is acquired by eminent domain, the fair market value on the date on which the complaint in condemnation was filed.

However, if the property is agricultural land, the fair market value shall be determined under IC 32-24-1.

(i) The department shall adopt guidelines to determine whether a project constitutes an addition to the state highway system for purposes of this section. In adopting guidelines under this subsection, the department shall consider the following:

(1) The need for additional capacity.

(2) The estimated cost of the project.

(3) Whether the project is new construction or maintenance.

(j) As used in this section, "owner" does not include a utility.

(k) At the same time and in the same manner as the notice is sent under subsection (d)(2), the department shall notify the owner of property to be acquired for a right-of-way of the following:

(1) With respect to damage that occurs to the property as a result of entry onto the land for a purpose set forth in IC 8-23-7-26:

(A) a description of the owner's right to compensation for the damage from the department; and

(B) the procedure that the owner must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which the owner may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 2. IC 8-23-7-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. An authorized employee or representative of the department engaged in a survey or investigation authorized by the commissioner or the commissioner's designee, **including a survey or investigation for purposes of IC 8-23-5-9**, may enter upon, over, or under any land or property within Indiana to conduct the survey or investigation by manual or mechanical means, which include the following:

(1) Inspecting.

(2) Measuring.

(3) Leveling.

(4) Boring.

(5) Trenching.

(6) Sample-taking.

(7) Archeological digging.

(8) Investigating soil and foundation.

(9) Transporting equipment.

(10) Any other work necessary to carry out the survey or investigation.

SECTION 3. IC 8-23-7-27 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. **(a)** Before an authorized employee or representative of the department enters upon, over, or under any land or water under section 26 of this chapter, the occupant of the land or water shall be notified in writing by first class United States mail of the entry not later than five (5) days before the date of entry. The employee or representative of the department shall present written identification or authorization to the occupant of the land or water before entering the land or water.

(b) At the same time and in the same manner as the notice required under subsection (a), the department shall notify the occupant and the record owner of the land or property of the following:

(1) With respect to damage that occurs to the land or property as a result of entry upon, over, or under the land or property as set forth in section 26 of this chapter:

(A) a description of the aggrieved party's right to compensation for the damage from the department; and

(B) the procedure that the aggrieved party must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which an aggrieved party may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 4. IC 8-23-7-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. If during an entry under section 26 of this chapter damage occurs to the land or water as a result of the entry or work performed during the entry, the department shall compensate the aggrieved party. If the aggrieved party is not satisfied with the compensation determined by the department, the amount of damages shall be assessed by the county agricultural extension educator of the county in which the land or water is located and two (2) disinterested residents of the county, one (1) appointed by the aggrieved party and one (1) appointed by the department. A written report of the assessment of damages shall be mailed to the aggrieved party and the department by first class United States mail. If either the department or the aggrieved party is not satisfied with the assessment of damages, either or both may file a petition, not later than fifteen (15) days after receiving the report, in the circuit or superior court of the county in which the land or water is located. **The department shall pay any compensation awarded to an aggrieved party under this section:**

(1) not more than sixty (60) days after the date on which the parties agree to the amount of the compensation; or

(2) as ordered by the circuit or superior court.

Renumber all SECTIONS consecutively.

(Reference is to ESB 31 as reprinted February 19, 2008.)

Conference Committee Report
on
Engrossed Senate Bill 31

Signed by:

Senator Zakas
Chairperson

Representative Dembowski

Senator Arnold

Representative Duncan

Senate Conferees

House Conferees